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JURISDICTION.

The Jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED.

1. Where Congress has not seen any need to fashion a rule of contribution for non-collision maritime cases and where the facts of the instant case would not permit any contribution if such a rule did exist, should not this Honorable Court deny Certiorari here?

2. Was not the lower court correct in deciding that the Jones Act was *not* designed to enlarge or extend a shipowner's liability with respect to other shipowners especially when the only possible fault attributable to the shipowner-employer here was passive or secondary in nature?

3. Where valid reasons remain for preserving a no contribution rule, and where the facts presented in support of a rule change are of obvious limited application and importance, should not this Honorable Court avoid changing a settled and established rule?

STATEMENT OF THE CASE.

Domingo Mendez, while a crewmember on Respondent's, States Marine Lines, vessel boarded a launch neither owned, operated, managed, nor controlled by Respondent though engaged by it (30a, 212a). The launch was subsequently involved in a collision with Petitioner's vessel and Mendez drowned. The launch service, which was probably the only such service in Da Nang Harbor, was not made a party to this action (213a).

A death action was brought by the representatives of Mendez's estate against both the Petitioner and Respondent although no specific jurisdictional allegations were made in the complaint (4a to 8a). Shortly prior to trial, Petitioner settled directly with plaintiff's estate and proceeded against the Respondent here on its cross-claim for indemnity and/or contribution.

After hearing all the evidence on liability, the District Court granted Respondent's Motion for Dismissal under Rule 41(c) incorporating 41(b) of the Federal Rules of Civil Procedure. The District Court's Finding of Facts and Conclusions of Law were dictated immediately after all the evidence was presented. They are only partially summarized at page 5 of Petitioner's brief, skipping the several conclusive elements of fault establishing Petitioner's fault.

The District Court then held that Petitioner was not entitled to contribution because there was no agency relationship between Respondent and the liberty launch which inured to the Petitioner's benefit in the cross-claim. Any liability which might have been imposed upon the Respondent as to Mendez under the Jones Act did not extend to third parties, such as the Petitioner (265a).

Petitioner appealed challenging only the Conclusion of Law that Petitioner could not have contribution. Respondent filed a cross-appeal challenging that portion of the Dis-

trict Court's opinion which found fault on the part of any one other than Petitioner.

The Court of Appeals for the Third Circuit affirmed the decision of the District Court dismissing the cross-claim, but found it unnecessary to decide the merits of Respondent's appeal, despite the complete absence of any evidence from the launch to show that its operator failed to see or do anything which contributed to the collision. Indeed, such a conclusion, inferentially drawn from the mere fact the launch was in collision, has brought about these appeals to alleged equitable principles without reference to those active faults of omission and commission which the record abundantly reflects to be the only responsible cause of the collision, i.e. the admitted flagrant fault of Petitioner's vessel.

REASONS FOR DENYING WRIT.

1. The issue in the present case is of relatively minor significance and no amount of rhetoric can raise it to a level warranting review by this Court on Certiorari. Petitioner attempts to have this Court change its holding in *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, 342 U. S. 282 (1952), but offers no valid reason as to why this case should serve as a logical springboard for such change.

The District Court and the Third Circuit Court of Appeals correctly held that the launch, which was not owned, operated, or controlled by Respondent, was operated by its owner as an independent contractor and the launch owner and not the vessel it was servicing was the proper party from whom petitioner might seek contribution (Appendix A3).

Halcyon has no direct application to the instant case even if it were reversed. The only tortfeasors involved in this action were the launch owner and the Petitioner. Not one case is cited by Petitioner which in anyway supports the allegation that Respondent can be held responsible to a third party for a launch operated by an independent contractor. *Halcyon* concerned a claim for contribution by a vessel owner against a ship repairer where both parties were specifically found actively at fault for the injury. This Court refused to grant a contribution rule in such circumstances and left it to Congress, if it desired, to fashion a rule. It was there properly noted that the legislative process is peculiarly adapted to determine which of the many possible solutions to the problem would be most beneficial in the long run. The same reasoning still applies. This Court has followed this principle since *Halcyon* and no conflict has been found in any of the Circuits concerning the application of the rule.

2. The present case was correctly decided by the lower courts. Petitioner maintains that Respondent's possible liability under the Jones Act to decedent makes Respondent a joint tortfeasor. The Third Circuit Court of Appeals correctly held that any liability imposed upon an employer by the Jones Act vis á vis Mendez cannot ". . . be so twisted as to support . . ." Petitioner's contribution claim (Appendix A3). As a result of this collision, the launch owner, its crewmembers, and the decedent all had a right of action against Petitioner. Obviously neither the launch owner, its crewmembers, nor any other passengers who may have been in the launch had a right of action against Respondent or its vessel. Respondent neither did nor failed to do anything which contributed to the collision.

Mendez may have had a cause of action against Respondent by reason of his Jones Act rights, an action he chose not to pursue. The Jones Act was enacted for the benefit of seamen and enlarged the rights of these so-called wards of admiralty. *The Arizona v. Anelich*, 298 U. S. 110, 123 (1936). It was obviously not designed to extend a shipowner's liability with respect to other shipowners (Appendix A4).

This Court has held that a shipowner is liable to an employee under the Jones Act for the negligence of a cab driver who collides with a truck. *Hopson v. Texaco, Inc.*, 383 U. S. 262 (1966). Petitioner's argument, carried to its illogical result, means that a shipowner would be faced with defending law suits for contribution throughout the world brought by various tortfeasors taking advantage of the fortuitous fact that the injured party also happened to be a seaman employee of the shipowner.

3. Petitioner's choice of cases decided under the F. E. L. A. to show where contribution has been allowed are clearly inappropriate by reason of the controlling

Federal maritime law. However, even if they were controlling they would not extend relief in the present case. In the cases cited on page 7 of Petitioner's brief, the courts held that contribution was allowed where the tortious actions of the defendants were equal; however, where the scope of tortious conduct of one was greater than the other or where one's negligence was active or primary and the other's passive or secondary, no contribution was granted. Obviously, the scope of Petitioner's negligence here was certainly more active and greater than the possible technical or secondary negligence of Respondent, the responsibility for which only arises because of the greatly expanded duties of a seaman's employer.

Respondent does not urge that *Halcyon* may never produce inequitable results. Nevertheless, in the case at bar, equity was most certainly done. Petitioner's vessel ran down a launch and Mendez drowned. Had Mendez been a crewmember of the launch or a passenger of another vessel whose owner was not subject to jurisdiction in this court, Petitioner would be subject to the full payment of any judgment levied against it. In the instant case, Petitioner settled the claim of Mendez's estate on the eve of trial. It obviously did so for tactical reasons better known to Petitioner or its counsel. While the reasons are not of record, it is perhaps appropriate to surmise that a defendant charged with gross negligence and reckless misconduct, as was the Petitioner here, did not wish to have a jury test of the punitive damage issue, whether recoverable or not, as advanced by the estate of an innocent deceased seaman (8a).

In any event, Petitioner now asks this Court to assume the case went to trial and, after judgment for Mendez against both, Respondent alone was forced to pay. Aside from the usual problems involved with hypothetical assumptions, this twisted logic does not advance Petitioner's argu-

ment. Mendez's estate would have been compensated in either event and the only so-called inequitable consequences would have resulted from the Respondent's inability to convince the fact finder of its innocence.

CONCLUSION.

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

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